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**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Develop an  
Electricity Integrated Resource Planning  
Framework and to Coordinate and Refine Long-  
Term Procurement Planning Requirements.

Rulemaking 16-02-007  
(Filed February 11, 2016)

**MOTION OF IMPERIAL COUNTY TO REOPEN THE RECORD  
TO CONSIDER THE IMPACT OF NEW IMPORT TARIFFS ON SOLAR CELLS  
AND MODULES IN THE REFERENCE SYSTEM PLAN**

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Pursuant to Rules 11.1 and 13.4, subsection (b), of the Commission’s Rules of Practice and Procedure (“Rules”), Imperial County submits this Motion to Reopen the Record to Consider the Impact of New Import Tariffs on Solar Cells and Modules in the Reference System Plan (“Motion”) in this Rulemaking (“R.”) 16-02-007. In this Motion, Imperial County urges the California Public Utilities Commission (“Commission”) to reopen the record, analyze the impact of the tariffs on imported solar cells and modules (“solar import tariffs”) that the Trump Administration announced on January 22, 2018,<sup>1</sup> and revise the (Proposed) Decision Setting Requirements for Load Serving Entities Filing Integrated Resource Plans (“Proposed Decision”), dated December 28, 2017 to incorporate such analysis into the Reference System Plan.

**I. BACKGROUND**

On September 19, 2017, following several informal activities during the course of almost two years (2016 and 2017),<sup>2</sup> the Administrative Law Judge (“ALJ”) issued a Ruling

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<sup>1</sup> Press Release, Office of the U.S. Trade Representative, President Trump Approves Relief for U.S. Washing Machine and Solar Cell Manufacturers (Jan. 22, 2018), *available at*: <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2018/january/president-trump-approves-relief-us> [hereinafter “Press Release, Solar Import Tariff”).

<sup>2</sup> R. 16-02-007, *(Proposed) Decision Setting Requirements for Load Serving Entities Filing Integrated Resource Plans*, pp. 4-5 (Dec. 28, 2017) [hereinafter “Proposed Decision”] (describing informal activities conducted in this proceeding by Commission staff).

Incorporating Energy Division Staff's Modeling Results into the Record and Releasing a Proposed Reference System Plan ("Ruling").<sup>3</sup>

On September 25 and 26, 2017, the Energy Division staff held a two-day workshop to provide the parties with an opportunity to clarify issues regarding the modeling efforts and the Ruling. After the workshop, Imperial County requested an additional model run to simulate the effects of a potential import tariff on solar components. The results of this additional model run were released on October 12, 2017<sup>4</sup> and subsequently posted on the Commission's website.<sup>5</sup>

On October 26, 2017, several parties, including Imperial County, filed comments suggesting adjustments to the Ruling and making specific recommendations to modify the Reference System Plan proposed in the Ruling.

On December 28, 2017, the Commission issued the Proposed Decision, which adopted a Reference System Plan that is based on a 42 million metric ton ("MMT") emissions target. The Proposed Decision did not incorporate recommendations from the parties and ignored the sensitivity analyses and additional model runs requested by the parties, including the solar import tariff simulation requested by Imperial County.

On January 17, 2017, several parties filed opening comments on the Proposed Decision. Parties also filed reply comments, which were due on January 22, 2017. On that same date, the United States ("U.S.") Trade Representative released a statement announcing new safeguard tariffs on imported solar panels components (i.e., the solar import tariffs).<sup>6</sup>

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<sup>3</sup> See generally, R. 16-02-007, *Administrative Law Judge's Ruling Seeking Comment on Proposed Reference System Plan and Related Commission Policy Actions* (Sept. 19, 2017) [hereinafter "Ruling"]. According to the Ruling, the Proposed Reference System Plan includes the Ruling and its attachments, particularly Attachment A ("*Proposed Reference System Plan*") [hereinafter "Attachment A"].

<sup>4</sup> E-mail from Patrick Young, Regulatory Analyst, CPUC Energy Division, to R. 16-02-007 service list (Oct. 12, 2017, 4:57 p.m. PST) (notifying parties and service list that modeling results for additional model runs were posted to the Commission website).

<sup>5</sup> See CPUC, Integrated Resource Plan and Long Term Procurement Plan (IRP-LTPP), *Requested Modeling Results*, <http://cpuc.ca.gov/irp/RequestedCases2017/> (last visited Jan. 29, 2018) [hereinafter "Requested Modeling Results"] (the supplemental run is titled "ImpCnty\_1\_20171003").

<sup>6</sup> Press Release, Solar Import Tariff, *supra* n. 1.

## II. DISCUSSION

### A. The Solar Import Tariffs Are a Material Change of Law that the Commission Should Consider Before Adopting a Final Decision in This Proceeding.

Pursuant to Rule 11.1, any party to any proceeding before the Commission may file a motion to “request for the Commission or the Administrative Law Judge to take a specific action related to an open proceeding before the Commission.”<sup>7</sup> A motion can be filed any time “during the pendency of a proceeding.”<sup>8</sup> In turn, Rule 13.4, subdivision (b), states that a party may file a motion to set aside submission and reopen the record “for the taking of additional evidence,” which must “specify the facts claimed to constitute grounds in justification thereof, *including material changes of fact or of law*....”<sup>9</sup> While the language of Rule 13.14 applies specifically to proceedings that require formal hearings and evidence gathering (i.e., adjudicatory and ratesetting proceedings), it provides a template for the Commission to assess motions to reopen the record in rulemaking proceedings under Rule 11.1. The Commission has considered similar motions in quasi-legislative proceedings in the past.<sup>10</sup>

The solar import tariffs are a material change of law that will impact the Reference System Plan adopted in the Proposed Decision, which is a draft of the final decision that will finalize this round of the Integrated Resource Planning (“IRP”) proceeding. According to the U.S. Trade Representative announcement, the new tariffs will impact crystalline-silicon solar photovoltaic cells and modules and will apply to all imports over the first 2.5 gigawatts (which are exempt from the tariffs).<sup>11</sup> The tariff will begin at 30 percent in the first year, phasing out over a period of four years, with an additional 5 percent decrease each subsequent year (i.e., 25 percent in the second year, 20 percent in the third year, and 15 percent in the fourth year).<sup>12</sup> Experts estimate that the tariffs may increase the cost of solar modules by 10 to 12 cents per

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<sup>7</sup> Rule 11.1(a).

<sup>8</sup> Rule 11.1(b).

<sup>9</sup> Rule 13.14(b) (emphasis added).

<sup>10</sup> See, e.g., R. 12-11-005, *Assigned Commissioner’s Ruling on Proposed Refinements to the Self-Generation Incentive Program* (June 2, 2017) (denying a motion to reopen the record filed by a coalition of parties).

<sup>11</sup> 2.5 gigawatts of imported solar components are equivalent to about 11.5 million panels. *US slaps 'America First' tariffs on washing machines and solar panels*, BBC NEWS (Jan. 23, 2018), <http://www.bbc.com/news/business-42784380>.

<sup>12</sup> Press Release, Solar Import Tariff, *supra* n. 1.

watt, which is the equivalent of a 29 to 34 percent increase over the current import prices of 35 to 40 cents per watt.<sup>13</sup> As explained below, the Reference System Plan is based entirely on assumptions regarding the cost of solar resources that do not reflect increases due to the new tariffs. Imperial County urges the Commission to reopen the record to consider this material change of law before issuing a final decision in this proceeding.

Rule 13.4, subdivision (b), also requires parties to include “a brief statement of proposed additional evidence, and explain why such evidence was not previously adduced.” In the next section, Imperial County offers a brief statement of the additional evidence that the Commission should gather in this proceeding before adopting a final decision. With regard to the timing, as indicated above, the solar import tariffs were announced on the same day that reply comments on the Proposed Decision were due. The reply comment round was the final opportunity for the parties to present recommendations to the Commission, and given the limited scope and length restrictions for reply comments under the Rules,<sup>14</sup> it was an inadequate procedural mechanism to include observations regarding the solar import tariffs. In other words, the parties did not have sufficient time to react to the news regarding the solar import tariffs, and in any event, reply comments were not the proper medium to discuss the impact of that material change in law in the Reference System Plan. Therefore, this Motion is the adequate procedural mechanism for Imperial County to request that the Commission to grant the relief set forth below.

### **B. The Commission Should Reopen the Record to Consider the Impacts of the Solar Import Tariffs on the Reference System Plan**

The Proposed Decision adopted the staff’s recommendation to implement a Reference System Plan based on a 42 MMT emissions scenario.<sup>15</sup> The Reference System Plan is the outcome of several modeling efforts designed to recreate the optimal resource portfolio for

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<sup>13</sup> Juli Pyper, *Trump Administration Issues 30% Solar Panel Import Tariff*, GREENTECH MEDIA (Jan. 22, 2018), <https://www.greentechmedia.com/articles/read/breaking-trump-admin-issues-a-30-solar-tariff#gs.Jy9oggE>; see also, Shayle Kann & MJ Shiao, *The Potential Impact of Solar Tariffs in 12 Charts*, GREENTECH MEDIA (Oct. 17, 2017), <https://www.greentechmedia.com/articles/read/the-potential-impact-of-solar-tariffs-in-12-charts#gs.0XLBi34>.

<sup>14</sup> Pursuant to Rule 14.3(d), reply comments are limited to “identifying misrepresentations of law, fact or condition of the record contained in the comments of other parties” and cannot exceed five pages. The solar import tariffs are a material change of law that is not in the record and was not asserted in comments from the other parties.

<sup>15</sup> Proposed Decision, *supra* note 2, p. 64.

planning purposes, among other goals. Load-serving entities (“LSE”) are supposed to compare their individual IRPs against the optimal resource portfolio suggested in the Reference System Plan.<sup>16</sup> The Proposed Decision indicates that the optimal portfolio selected by the model includes approximately 9,000 megawatts (“MW”) of utility-scale solar by 2030, which corresponds to 73 percent of new resources to be added in the next dozen years.<sup>17</sup>

The Reference System Plan and associated portfolio of resources are based on assumptions regarding the cost of solar generation that became obsolete due to the new solar import tariffs. The RESOLVE model, which was responsible for identifying the optimal portfolio of resources, assumed that the implied levelized cost of energy (“LCOE”) of solar resources would *decrease* an average of 2.3 percent over the next four years (2018 to 2022).<sup>18</sup> However, as indicated above, the cost of the most important components of this resource is likely to *increase* by 29 to 34 percent during that same period.<sup>19</sup> It is unlikely that 9,000 MW of solar generation would be selected if the model considered these new solar cell and module cost assumptions. In other words, the Reference System Plan is based on *expectations* about the future that are unrealistic under the new legal *reality* that has unfolded due to the solar import tariffs.

During modeling stages in this proceeding, Imperial County anticipated the possibility of new tariffs on solar components and requested an additional model run to simulate the impacts of such tariffs on the Reference System Plan.<sup>20</sup> The additional case run simply combined two of the

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<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at p. 65.

<sup>18</sup> See, R. 16-02-007, CPUC Energy Division, *RESOLVE Model Documentation: Inputs & Assumptions*, p. 36 tbl. 21 (Sept. 18, 2017) [hereinafter “Attachment B”]. According to this table, the estimated LCOE over the period comprised between 2018 and 2022 is supposed to decrease from 1.9 to 2.2 percent for utility-scale solar generation depending on the location of the solar resource (distributed solar LCOE is projected to decrease by 4.8 percent).

<sup>19</sup> Imperial County recognizes that the cost of cells and modules is only a portion of the total cost of installed utility-scale photovoltaic solar systems, but the impact of the import tariff on solar cells and modules is likely to substantially reduce the cost-effectiveness of photovoltaic solar as modeled in the RESOLVE modeling that is the basis for the Proposed Decision.

<sup>20</sup> Email from Luisa Elkins, Attorney for Imperial County, to Forest Kaser, Senior Analyst, CPUC Energy Division, and Patrick Young, Regulatory Analyst, CPUC Energy Division (Sept. 25, 2017, 4:05 p.m. PDT) (on file with author). See also: Requested Modeling Results, *supra* note 5 (the supplemental run is titled “ImpCnty\_1\_20171003”). Because costs assumptions were fixed inputs in the model and could not be changed at will, Imperial County consulted with staff to identify the best approach to conduct the simulated scenario before submitting its model run request. However, this is only an approximation because Imperial County was limited to the changes allowed within the RESOLVE tabs.

sensitivities already embedded in the model (high solar photovoltaic cost and no Incentive Tax Credit scenarios) to serve as a proxy for higher solar generation costs that would be comparable to those likely to occur if import tariffs were imposed on solar cells and modules. This was the sole effort that the Commission staff undertook to understand the effects of a tariff on solar components in the Reference System Plan, and the results of this case run were not even discussed in the Proposed Decision. It is therefore clear that the Commission has not seriously considered the impacts of solar import tariffs in the selection of the optimal reference system portfolio for planning purposes.

Pursuant to the Proposed Decision, individual LSEs are supposed to prepare and submit their IRPs in the second half of the year.<sup>21</sup> LSEs must compare their IRPs against the “optimal” portfolio of resources recommended in the Reference System Plan. However, as indicated above, the portfolio in the Proposed Decision is based on assumptions that are currently outdated and, as a result, it is no longer optimal. If the Commission approves the Reference System Plan without considering the impact of the solar import tariffs on the cost of solar generation (while the LSEs base development of their individual IRPs on solar costs that include the impact of the import tariffs to reflect market realities), the LSEs’ IRPs would be significantly different than the reference system portfolio adopted in this proceeding. Put simply, the Reference System Plan and associated portfolio of resources would be useless as a planning tool if the Commission does not correct the flawed assumptions regarding the cost of solar generation before issuing a final decision in this proceeding.

Failure to correct the Reference System Plan and the associate reference portfolio of resources in this round of the IRP would also delay the procurement of non-solar renewable resources that are now likely to become cost-effective before 2030 due to the new solar import tariffs. Adoption of a flawed plan and portfolio would also set back the efforts to improve the IRP process. While it is true that the Commission will have an opportunity to correct the deficiencies of the 2018 IRP in two years, the potential to learn from this experience would be largely diminished if the plan that is enacted is inaccurate from its inception. The Commission should avoid this exercise in futility and give the 2018 IRP a chance to succeed.

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<sup>21</sup> Proposed Decision, *supra* note 2, p. 64.

Fortunately, the Commission still has time to correct the flaws in the plan, and the solution could be implemented easily. Imperial County respectfully recommends that the Commission order staff to conduct a new model run simulating increases in solar generation costs due to the new tariffs on imports. Further, Imperial County suggests that the Commission identify the optimal portfolio of resources based on the new model run and submit the results for party comment (which could be with a shortened comment period such as 10 days for opening comments, and 5 days for reply comments). This additional model run would not cause a material delay in this proceeding and would guarantee that the Reference System Plan and associated portfolio of resources are based on valid and current assumptions.

### **C. Based on Preliminary Model Runs, More Geothermal Will Be Needed By 2026 Under the Solar Import Tariffs**

As indicated above, staff conducted one additional model case run to simulate the impacts of a solar import tariff in the Reference System Plan and associated portfolio of resources. The supplemental model run not only selected less solar generation (which is less cost effective under the import tariffs), but also showed that 424 MW of geothermal in 2026 and 2,020 MW of geothermal in 2030 would be needed.<sup>22</sup> In its comments dated October 26, 2017, Imperial County drew attention to the potential increase in solar costs due to import tariffs:

Over-procurement of [solar] resources could expose ratepayers to high risk due to potentially higher costs associated with an expected increase in curtailment or a federal tariff on imported solar panels. Imperial County requested a supplemental RESOLVE run to estimate the effect of such a tariff, using high solar costs and no ITC/PTC as a basis for approximating the impact of import tariffs on solar costs. The results are striking: the model selects 424 MW of geothermal in 2026 and 2,020 MW of geothermal in 2030. Greater and earlier geothermal investment is ratepayer insurance against solar import tariffs. The Commission should consider the impact that over-procuring solar and wind resources in the short-term could have for the overall long-term resource portfolio diversity and must also incorporate the supplemental analysis of import tariff risks into its final Reference System Plan.<sup>23</sup>

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<sup>22</sup> Requested Modeling Results, *supra* note 5 (the supplemental run is titled “ImpCnty\_1\_20171003”).

<sup>23</sup> Regarding this request, Imperial County explained that: “On September 22, 2017, the U.S. International Trade Commission (“USITC”) upheld a complaint filed by two solar panels manufacturers who claimed that low-cost solar panel imports had damaged their businesses. The USITC decision gives President Donald Trump until January to decide whether to impose tariffs on imports of solar panels from



This recommendation was dismissed in the Proposed Decision. However, at the time of the filing of those comments and the release of the Proposed Decision (December 28, 2017), the solar import tariffs were a mere possibility. Today, those tariffs are a legal reality, which the Commission must address before adopting a final decision in this round of the IRP.

Importantly, in its several comments in this proceeding (including, most recently, the comments on the Proposed Decision), Imperial County highlighted some flaws in the assumptions and analysis within the Reference System Plan that was adopted in the Proposed Decision.<sup>24</sup> In particular, the Reference System Plan and the proposed resource portfolio are based on unrealistic assumptions regarding the service life of natural gas-fired plants (which are assumed to remain online indefinitely against all evidence to the contrary) and failed to consider the sensitivity analyses (which show that timely retirement of those plants would require over 500 MW more geothermal generation than is currently identified in the model, i.e., 744 MW instead of only 202 MW). Imperial County submits that, like its observations about the potential implementation of solar import tariffs, its warnings regarding the retirement of natural gas-fired plants may also become true. If the Commission declines to review the Reference System Plan to incorporate the new solar import tariffs and Imperial County's predictions continue to materialize (for instance, natural gas-fired plants begin to retire in the next few years), the system would severely underinvest in geothermal generation—and other resources that will become more cost-effective than solar due to the new import tariffs. In other words, more geothermal generation than the 202 MW adopted in the Reference System Plan will be cost-effective earlier than originally projected in RESOLVE because of the new solar import tariffs, and the

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other countries. As a remedy, the companies have requested a price floor of 78 cents per watt, as well as a tariff that starts at 40 cents per watt and declines over four years for imported solar panels. Industry experts believe that the cost of solar panels could more than double if the President adopts this suggested remedy.” R. 16-02-007, *Comments of Imperial County on the Administrative Law Judge's Ruling Seeking Comment on the Proposed Reference System Plan and Related Commission Policy Actions*, p. 11. n. 17. (Oct. 26, 2017) [hereinafter “IC’s RSP Opening Comments”] (citing Eric Wolff, *Trade decision could devastate U.S. solar market*, POLITICO (Sept. 22, 2017), <http://www.politico.com/story/2017/09/22/solar-tariff-trump-china-trade-243021>).

<sup>24</sup> See, IC’s RSP Opening Comments, *supra* note 23; *Imperial County’s Reply to Opening Comments on the Administrative Law Judge’s Ruling Seeking Comment on The Proposed Reference System Plan and Related Commission Policy Actions* (Nov. 9, 2017); *Imperial County’s Comments on the Proposed Decision Setting Requirements for Load Serving Entities Filing Integrated Resource Plans* (Jan. 17, 2018).

occurrence of any of the events that Imperial County has warned the Commission about would only exacerbate this need. The same may be true with regard to other resources; it is not only geothermal that may be more cost-effective now compared to solar. For this reason, the Commission should reopen the record to consider the impact of the new solar import tariffs on the Reference System Plan adopted in the Proposed Decision and revise the recommended system portfolio to reflect anticipated cost increases in solar generation under the tariffs.

### **III. CONCLUSION**

The Trump Administration announced new tariffs on imported solar components after the Commission released its Proposed Decision adopting the Reference System Plan and associated portfolio of resources, and on the same date that the parties filed their last round of comments in this phase of the proceeding. Neither the Commission nor the parties have had an opportunity to review the impact of the new tariffs in the Reference System Plan.

The new solar import tariffs will likely increase the cost of solar generation. The model that the Commission staff used in this proceeding is based on cost assumptions that will become invalid upon the implementation of the solar import tariffs. Therefore, the Reference System Plan and the recommended portfolio of resources must be revised to reflect the change in the solar generation cost outlook. Failure to consider the impact of the legally binding solar import tariffs in the Reference System Plan may have damaging implications for ratepayers, disadvantaged communities, and overall system reliability.

Preliminary modeling requested by Imperial County showed that solar import tariffs would cause the model to select more geothermal generation (424 MW) than identified in the reference case (202 MW), and that this resource would be required by 2026 following the retirement of the Diablo Canyon Power Plant. As Imperial County stated in its comments, the Reference System Plan contains other flawed assumptions that may also increase the need for more geothermal generation in the near future if any of those other events materialize.

For the reasons stated above, Imperial County respectfully requests the Commission to (1) grant this Motion and reopen the record, (2) order staff to conduct a new model run simulating the increase in solar generation costs due to the new tariffs on imports, (3) identify the optimal portfolio of resources under the new model run, and (4) submit the new reference system portfolio for party comments under a shortened period.

Respectfully submitted,

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